IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1599 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAIKH SEEMABANO YUSUFBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1599 of 2005

MR HASHIM QURESHI for Petitioner No. 1

MR HD DAVE, ASST GOVT PLEADER for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/05/2005

ORAL JUDGEMENT

Rule. Shri H.D.Dave, the learned AGP waives service of Rule on behalf of the respondents.

With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

.RS 2.

#. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Director of Primary Education, State of Gujarat dated 31.8.2005 in cancelling the admission of the petitioner in PTC course and the order dated 1.2.2005 issued by the Principal of P.R.Training College, Ahmedabad, by which, on cancellation of the admission of the petitioner in PTC Course, the petitioner has been directed not to attend the college. By way of amendment, the petitioner has also challenged the legality and validity of the order dated 1.2.2005 passed by the Director, Developing Caste and Welfare Department by which the caste certificate which was issued in favour of the petitioner declaring the petitioner to be a candidate belonging to "Muslim Sepoi" community has been cancelled.

#. It is the case of the petitioner that the petitioner belongs to "Muslim Sepoi" community which is declared to be a S.E.B.C. community and on getting the certificate from the Deputy Director, Developing Caste, Ahmedabad, the petitioner applied for getting admission in PTC course in the academic year 2004 from the reserved quota / category for SEBC and the petitioner was granted in the reserved category of SEBC. It appears from the record that to verify the genuineness of caste of the petitioner and to consider whether the petitioner belongs to "Muslim Sepoi" community or not and therefore, the petitioner is entitled to benefit of reservation or not, by communication dated 21.9.2004 the petitioner was directed to remain present before the Director, Developing Cast and Welfare Department along with her father and / or guardian on 27.9.2004 with necessary documentary evidence in support of their claim that they belong to "Muslim Sepoi" community and if they belong to other State, then to produce evidence with regard to their staying in Gujarat prior to 1978. It appears that the petitioner and her father remained present before the Director, Developing Caste and Welfare Department on 27.9.2004 and produced the necessary documents and their statement was also recorded. It appears from the record that as the Director was, prima facie, satisfied that the petitioner does not belong to Muslim Sepoi community and that the petitioner is not entitled to the benefit of reservations, by communication dated 5.190.2004 the Director, Developing Cast and Welfare Department directed

the Director of Primary Education to initiate an appropriate proceedings for canceling her admission in the PTC college. It is also mentioned in the said communication / order dated 5.10.2004 that a separate independent order cancelling caste certificate is being passed. It also appears from the record that pursuant to the said communication dated 5.10.2004, the Director of Primary Education initiated the proceedings and by communication dated 21.10.2004 the petitioner was directed to remain present on 2.11.2004. After considering the reply submitted by the petitioner in person on dated 12.1.2005, the Director of Primary Education by impugned order dated 31.1.2005 cancelled admission of the petitioner of PTC by holding that the Director, Developing Cast and Welfare Department has not accepted the caste certificate of the petitioner and therefoer, the petitioner is not entitled to the benefit of reservation as SEBC. It is also mentioned in the said communication / order dated 31.1.2005 that the petitioner was given an admission in PTC after obtaining necessary writing to the effect that if ultimately the caste certificate is cancelled by competent authority, the petitioner will not claim any right over the admission which was given in the reserved quota and that any decision which may be taken by the admission committee will be binding to her. Consequently, the Principal, P.R.Training College by communication dated 1.2.2005 directed the petitioner not to attend college and aforesaid two orders came to be challenged by the petitioner by way of present special civil application.

#. In response to the notice issued by this Court, affidavit-in-reply came to be filed on behalf of the respondent No.2 - Director of Development Caste and Welfare Department, in which, it was pointed out that in fact, subsequently the Director, Developing Caste has also passed detail order on 1.2.2005 cancelling the caste certificate which was annexed along with the affidavit-in-reply and therefore, subsequently the petitioner has also challenged the said order dated 1.2.2005 passed by the Director, Developing Caste as according to the petitioner the said order dated 1.2.2005 was never communicated and / or served upon the petitioner and it only came to the knowledge of the petitioner on filing of the affidavit-in-reply. Thus, as stated hereinabove, the petitioner has challenged the order passed by the Director of Primary Education in cancelling admission of the PTC course as well as the order passed by the Director, Developing Caste dated 1.2.2005 in cancelling the caste certificate of the petitioner.

#. Shri Hasim Qureshi, the learned advocate appearing on behalf of the petitioner has submitted that the petitioner was heard by the Director of Primary Education and the petitioner was never heard by the authority who has passed the impugned order dated 1.2.2005 i.e. Director, Developing Caste. He also further submitted that the competent authority for cancelling the caste certificate is the Director of Developing Caste and not the Director of Primary Education and therefore, the impugned order requires to be quashed and set aside. It is also further submitted that even on merits also, the petitioner has submitted several documents such as caste status certificate and also the certificates of cousins and other family members which would amply show that the petitioner belongs to "Muslim Sepoi" community which is recognised as S.E.B.C. It is also further submitted that the petitioner was given admission in the month of August, 2004 and her admission in the PTC course came to be cancelled in the midst of the term which is not permissible and that has caused great hardships to the petitioner. It is also further submitted that in fact, there was no decision taken on 5.10.2004 and the order dated 5.10.2004 / 1.2.2005 are not passed on those dates but they are passed subsequently. It is also further submitted that as per the Judgment of the Hon'ble Supreme Court in case of KUMARI MADHURI PATIL AND ANOTHER V. COMMISSIONER, TRIBAL DEVELOPMENT AND OTHERS, reported in AIR 1995 SC 94, the decision is required to be taken by the competent authority with regard to caste certificate within two months and in the instant case, the action is taken by the respondents after six months, the same requires to be quashed and set aside.

#. Shri H.D.Dave, the learned AGP appearing on behalf of the respondent has submitted that the contention on behalf of the petitioner that the petitioner was not heard by the Director, Developing Caste is factually incorrect. It is further submitted that in fact, pursuant to the show cause notice dated 21.9.2004 the petitioner had appeared before the Director, Developing Caste on 27.9.2004 and produced necessary documentary evidence in their support on 27.9.2004 and even statement of the petitioner and her father were recorded by the Director, Developing Caste. Therefore, it is requested to dismiss the present special civil application. It is also further submitted by him that so far as the Director of Primary Education is concerned, the petitioner was heard by the Director of Primary Education with regard to cancellation of admission in PTC course and if the opportunity would not have been given by the Director of

Primary Education before cancelling her admission, then there would have been a scope for raising an argument that before cancellation of the admission, the petitioner was not heard and therefore, to avoid such an eventuality, before cancellation of her admission in PTC course, the petitioner was heard. It is also submitted that on appreciation of evidence, the competent authority has taken a decision to cancel the caste certificate by holding that the petitioner does not belong to "Muslim Sepoi" community and/or no satisfactory evidence is produced to show that the petitioner belongs to "Muslim Sepoi" community and therefore, the petitioner is not entitled to benefit of reservation as SEBC candidate and therefore, caste certificate which was issued in favour of the petitioner is rightly cancelled and accordingly, as a consequence thereof as the petitioner was not entitled to the benefit of reservation as SEBC candidate as "Muslim Sepoi", admission of the petitioner in PTC course is rightly cancelled. It is also further submitted that in fact and as observed in the impugned order dated 1.10.2005 the petitioner was given admission in PTC course conditionally subject to verification of the certificates and caste certificate by the competent authority. In the mean time, as the admission process was going on, only with a view to see that the petitioner may not suffer, the petitioner was given admission in PTC course conditionally. It is also further submitted that in fact the proceedings were initiated by the Director of Developing Caste within a period of two months as the petitioner was granted admission in PTC in the month of August, 2004 and as it was found on 5.10.2004 itself that the petitioner does not belong to "Muslim Sepoi" community, the Director of Developing Caste has communicated and informed to the Director, Primary Education to take an appropriate decision with regard to cancellation of admission of the petitioner in PTC course and that detail order will be passed subsequently and subsequently a detailed reasoned order is passed on 1.2.2005. It is further submitted that in fact in the notice issued by the Director of Primary Education dated 21.10.2004 there is a reference of order / communication passed by the Director of Developing Caste dated 5.10.2004 and therefore, it cannot be said that there was no communication / order dated 5.10.2004 of the Director of Developing Caste. Relying on the decision of the Hon'ble Supreme Court of India in case of KUMARI MADHURI PATIL AND ANOTHER (Supra), it is also further submitted that the High Court is not a court of appeal to appreciate the evidence and the Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless

found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact and when the Committee considers all the material facts and record a finding, though another view, as a Court of appeal may be possible, it is not a ground to reverse the findings. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately recorded the finding. Therefore, it is submitted that when the competent authority after appreciating the evidence on record, has come to the conclusion that there is no sufficient material to show that the petitioner belongs to "Muslim Sepoi" community and therefore, accordingly the caste certificate is cancelled and therefore, it is requested to dismiss the present special civil application. It is also further submitted that as held by the Hon'ble Supreme Court in the aforesaid case of KUMARI MADHURI PATIL (Supra), once it is found and finding is recorded that certificate obtained was false, the necessary consequence is to cancel the admission and under the circumstances, the Director of Primary Education has rightly cancelled admission of the petitioner in the PTC course.

#. Heard the learned advocates appearing on behalf of the parties.

#. It is to be noted that the petitioner was granted admission in PTC course in the month of August, 2004 conditionally on the basis of the caste certificate which came to be produced by the petitioner and in reserved category of SEBC. Thus, admission which was given to the petitioner in PTC course was conditional one and subject to verification of caste certificate by the competent authority and the petitioner has also given in writing to that effect before the Admission Committee. The Director of Developing Caste initiated the proceedings for verification of the caste certificate by issuing show cause notice dated 21.9.2004 and the petitioner was directed to remain present before the Director of Developing Caste who is the competent authority and to produce necessary evidence in support of their case that the petitioner belongs to "Muslim Sepoi" community. On 27.9.2004 the petitioner along with her father did remain present and submitted necessary documentary evidence which were in their possession in support of their case that they belong to "Muslim Sepoi" community. A statement was also given by the petitioner as well as her father before the Director, Developing Caste on

27.9.2004. Under the circumstances, it cannot be said that the petitioner was not given an opportunity to represent her case before the Director of Developing Caste who is competent authority. On prima facie considering the fact that the petitioner does not belong to "Muslim Sepoi" community, by communication dated 5.10.2004 the Director of Developing Caste informed the Director of Primary Education to consider the case of the petitioner for admission in PTC course and to cancel the same. Even the Director of Primary Education also issued show cause notice and after giving an opportunity to the petitioner cancelled admission of the petitioner in PTC course. In communication dated 5.10.2004 the Director of Developing Caste has observed that a detail order will be passed subsequently and that might be due to the fact that there are so many cases before the Director of Developing Caste for verification and inquiry of caste certificates and that might be the only reason and thereafter a detail reasoned order came to be passed on 1.2.2005. From perusal of the order dated 1.2.2005, it appears that a well reasoned and detail order has been passed by the Director of Developing Caste after appreciation of evidence and considering the judgment of the Hon'ble Supreme Court in case of KUMARI MADHURI PATIL (Supra) and accordingly, the Director has passed the order to cancel the caste certificate which was issued in favour of the petitioner by coming to the conclusion that the petitioner does not belong to "Muslim Sepoi" Community. The authority has also come to the conclusion that the petitioner has failed to produce satisfactory documentary evidence to prove that they belong to "Muslim Sepoi" community and is entitled to benefit of reservation as SEBC candidate. As held by the Hon'ble Supreme Court in case of KUMARI MADHURI PATIL (Supra), the High Court is not a court of appeal to appreciate the evidence and the Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact and when the Committee considers all the material facts and record a finding, though another view, as a Court of appeal may be possible, it is not a ground to reverse the findings. The Court has to see whether the Committee considered all the relevant material placed before it or has applied its mind to relevant facts which have led the Committee ultimately recorded the finding. Therefore, this Court while exercising the powers under Articles 226 and 227 of the Constitution of India, is not required to reappreciate the same. As stated above, this Court is only required to see that whether the Committee has

considered all the materials placed before it or has applied its mind to the facts which led to the authority to ultimately record the finding. Therefore, considering the aforesaid decision of the Hon'ble Supreme Court and the observations made therein and considering the impugned order dated 1.2.2005 in light thereof, this Court is of the opinion that it cannot be said that the impugned order dated 1.2.2005 is in any way illegal and / or the same requires any interference by this Court while exercising the jurisdiction under Articles 226 and 227 of the Constitution of India. When the caste certificate of the petitioner declaring the petitioner as "Muslim Sepoi" is cancelled, as a natural consequences, the admission of the petitioner in PTC course also required to be cancelled and is cancelled after giving an opportunity also. Thus, from the record it clearly emerges that the petitioner was given an opportunity by the Director of Developing Caste who is the competent authority for cancellation of the caste certificate and also by the Director of Primary Education while cancelling admission of the petitioner in PTC course.

#. For the reasons stated above, there is no illegality found apparent on the face of record and as such, the action of the respondents is not perverse which requires interference of this Court under Articles 226 and 227 of the Constitution of India. On the contrary, it appears that the orders passed by the the authorities below are in consonance with the judgment of the Hon'ble Supreme Court of India in case of KUMARI MADHURI PATIL (Supra). In view of above discussion, there is no substance in the present petition and the same requires to be dismissed and the same is dismissed accordingly.

Rule is discharged with no order as to costs.
Ad-interim relief granted earlier stands vacated forthwith.
Direct Service is permitted.

Date : 4.5.2005 [M.R.Shah, J.]
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